

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DOUGLAS HOLLIBAUGH,

Defendant.

8:09CR337

ORDER

This matter is before the court on the defendant's Motion to Continue Trial (Filing 25). The defendant requests a continuance because the government has failed to provide "a substantial amount of discovery material." The defendant's motion advises that counsel for the United States is still "in the process" of obtaining the discovery that should have been provided to the defense by October 5, 2009. See Filing 8, Case Progression Order filed September 28, 2009.

The court finds that the defendant's motion must be granted due to the government's failure to provide discovery to the defense. Current defense counsel will not be available until after February 26, 2010.

IT IS ORDERED:

1. The motion to continue trial (Filing 25) is granted, and the jury trial now set for January 5, 2010 is continued to **March 2, 2010**.
2. In accordance with 18 U.S.C. § 3161(h)(7)(A), the court finds that the ends of justice will be served by granting this continuance and outweigh the interests of the public and the defendant in a speedy trial. Any additional time arising as a result of the granting of this motion, that is, the time between **January 5, 2010 and March 2, 2010**, shall be deemed excludable time in any computation of time under the requirement of the Speedy Trial Act because the failure to grant a continuance would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(A) & (B)(iv).
3. Defendant shall file the affidavit or declaration required by NECrimR 12.1(a) no later than **December 28, 2009**.

4. Counsel for the United States is ordered to show cause, by written affidavit, why the United States failed, or was unable, to timely provide discovery to the defense in accordance with the case progression order. The affidavit may be filed under seal, if necessary, and shall be filed no later than **Monday, January 4, 2010**.

DATED December 23, 2009.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**